

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUSTIN MARCUS ZINMAN,

Petitioner,

v.

JEFF MACOMBER,

Respondent.

Case No. 2:23-cv-02404-JDP (HC)

ORDER

GRANTING PETITIONER'S MOTION
FOR EXTENSION OF TIME, DENYING
HIS MOTION TO FILE THE AMENDED
PETITION IN OFFICIAL CAPACITY,
DIRECTING THE CLERK OF COURT TO
ASSIGN A DISTRICT JUDGE TO THIS
CASE, AND GRANTING LEAVE TO
AMEND THE PETITION

ECF Nos. 14 & 15

FINDINGS AND RECOMMENDATIONS

DENYING PETITIONER'S MOTION FOR
SUMMARY JUDGMENT

ECF No. 9

**OBJECTIONS DUE WITHIN FOURTEEN
DAYS**

Petitioner, a state prisoner, brings this action under section 2254, challenging his state conviction and arguing, *inter alia*, that California Penal Code section 422 is unconstitutional. ECF No. 13 at 5. The petition is, as explained below, non-cognizable and inadequate to proceed past screening. I will give petitioner a final opportunity to amend before recommending that this

1 action be dismissed. In so doing, I will grant his motion for extension of time, ECF No. 15, and
 2 deny his motion to bring this or any other amended petition in an “official” capacity, ECF No. 14.
 3 Finally, I recommend that petitioner’s motion for summary judgment be denied without prejudice
 4 as premature.

5 Analysis

6 The petition is before me for preliminary review under Rule 4 of the Rules Governing
 7 Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine
 8 the habeas petition and order a response unless it “plainly appears” that the petitioner is not
 9 entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v.*
 10 *Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

11 As noted above, petitioner has filed an amended petition, ECF No. 13, alongside two
 12 motions, one for an extension of time, ECF No. 15, and one seeking to bring the petition in an
 13 “official capacity,” ECF No. 14. His motion of extension of time, which I interpret to apply to
 14 the already filed amended petition, is granted, and his petition is deemed timely. I decline,
 15 however, to grant his motion to file the petition in his “official” capacity. ECF No. 14. Petitioner
 16 argues that he should be allowed to bring this action as an active “Government Relations” officer
 17 “doing business as American Media Intelligence.” *Id.* at 2. A non-attorney cannot litigate on
 18 behalf of another and, at a more fundamental level, petitioner’s attempt to distinguish between his
 19 personal capacity and his position as a “Government Relations” officer is irrelevant to this
 20 action.¹ It was petitioner who was convicted in state court, not “American Media Intelligence.”
 21 And petitioner’s attempts to confuse the distinction between his own actions and those of
 22 “American Media Intelligence” contribute in large part to the inadequacy of his petition. In one
 23 section, he asserts that he was “tasked with interpreting and executing laws of the United States
 24 so as to regulate policy and to advance United States interests by military or diplomatic action . . .
 25 .” ECF No. 13 at 5. Elsewhere he argues that he has been “engaging in business
 26 operations/investigating public corruption since being officially activated” *Id.* at 6. These

27 ¹ *Johns v. Cty. of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997) (“[A] non-lawyer has no
 28 authority to appear as an attorney for others.”).

1 arguments serve only to obscure the substance of his petition. And his “substantive” arguments
2 attacking the constitutionality of Californian Penal Code 422 are hopelessly convoluted. Rather
3 than attempt to cite case law or speeches, he should explain, in simple terms, why he believes this
4 section of the California penal code runs afoul of the constitution.

5 I will grant petitioner one final opportunity to amend. He should explain, in simple and
6 straightforward language, the circumstances surrounding his conviction and why it violated
7 federal law. In light of the faults of the petition, I necessarily recommend denial of petitioner’s
8 motion for summary judgment. Petitioner can refile his motion when and if respondent is served.
9 *See Est. of Ketschau v. Progressive Direct Ins. Co.*, NO. C23-1676JLR, 2024 U.S. Dist. LEXIS
10 50403, *4 (W.D. Wash. Mar. 19, 2024) (“It is wholly inappropriate to rule on summary judgment
11 before service of the complaint, as [defendant] has neither received notice of nor had an
12 opportunity to defend in this action.”).

13 Accordingly, it is ORDERED that:

- 14 1. Petitioner may file an amended petition within thirty days of this order’s entry. If he
15 fails to do so, I will recommend that this action be dismissed.
- 16 2. The Clerk of Court is directed to send petitioner a section 2254 habeas form with this
17 order.
- 18 3. The Clerk of Court is directed to assign a district judge to this action.
- 19 4. Petitioner’s motion for extension of time, ECF No. 15, is GRANTED, and his motion
20 to file his petition in official capacity, ECF No. 14, is DENIED.


21 Further, it is RECOMMENDED that petitioner’s motion for summary judgment, ECF No.
22 9, be DENIED without prejudice as premature.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned
27 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
28 objections shall be served and filed within fourteen days after service of the objections. The

1 parties are advised that failure to file objections within the specified time may waive the right to
2 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
3 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

4
5 IT IS SO ORDERED.

6 Dated: June 27, 2024


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE